

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
THE WORNICK COMPANY,

Plaintiff,

-against-

TRANS-PACKERS SERVICES CORPORATION,

Defendant.

CIVIL ACTION NO.  
11-CV-03008 (FB)(CLP)

**ANSWER TO THIRD-PARTY  
COMPLAINT COUNTS IV AND V;  
AFFIRMATIVE DEFENSES; AND  
JURY DEMAND**

-----X  
TRANS-PACKERS SERVICES CORP.,

Third-Party Plaintiff,

- against -

FRANKLIN FARMS EAST, INC.,

Third-Party Defendant.

-----X

Third-Party Defendant, FRANKLIN FARMS EAST, INC., hereinafter referred to as "FRANKLIN", by its attorney, ROBERT G. DEL GROSSO, ESQ., as and for its Answer to the Third-Party Complaint of TRANS-PACKERS SERVICES CORP., hereinafter referred to as "TRANS-PACKERS", Counts IV and V, alleges, upon information and belief, as follows:

**PARTIES**

1. Lacks knowledge or information sufficient to form a belief as to the truth or falsity of those allegations contained in the paragraph numbered "1" of the Third-Party Complaint.
2. Admits those allegations contained in the paragraph numbered "2" of the Third-Party Complaint.

**JURISDICTION AND VENUE**

3. Admits those allegations contained in paragraphs numbered "3", "4" and "5" of

the Third-Party Complaint.

**FACTS**

4. Lacks knowledge or information sufficient to form a belief as to the truth or falsity of those allegations contained in paragraphs numbered "7", "11", "12", "15", "17", "18", "19", "20", "21", "22", "23", "24", "26", "27", "28", and "29" of the Third-Party Complaint.

5. Admits those allegations contained in paragraphs numbered "6", "13", "14", "15", and "16" of the Third-Party Complaint.

6. Denies those allegations contained in paragraphs numbered "8", "9", "10", "25", "30", "31", and "32" of the Third-Party Complaint.

**COUNT IV**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

7. Repeats and realleges in Answer to the paragraph numbered "51" of the Third-Party Complaint as set forth in Answer to those paragraphs numbered "1" through "32" inclusive with the same force and effect as if more fully set forth at length herein.

8. The allegations contained in the paragraphs numbered "52", "53", and "54" of the Third-Party Complaint constitute a legal conclusion for which no response is required. Lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and leaves TRANS-PACKERS to its proofs.

9. Denies those allegations contained in those paragraphs numbered "55", "56", and "57" of the Third-Party Complaint.

**COUNT V**  
**BREACH OF IMPLIED WARRANTY OF FITNESS**  
**FOR A PARTICULAR PURPOSE BY FRANKLIN**

10. Repeats and realleges in Answer to the paragraph numbered "58" of the Third-Party Complaint as set forth in Answer to those paragraphs numbered "1" through "32", and "51"

through "57 inclusive with the same force and effect as if more fully set forth at length herein.

11. Admits those allegations contained in paragraphs numbered "59" and "60" of the Third-Party Complaint.

12. The allegations contained in the paragraph numbered "61" of the Third-Party Complaint constitute a legal conclusion for which no response is required. Lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and leaves TRANS-PACKERS to its proofs.

13. Denies those allegations contained in those paragraphs numbered "62", "63", and "64" of the Third-Party Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

14. The Third-Party Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

15. The causes of action and/or relief sought should be barred and/or precluded by virtue of the doctrine of waiver.

**THIRD AFFIRMATIVE DEFENSE**

16. The causes of action and/or relief sought should be barred and/or precluded by virtue of the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

17. The causes of action and/or relief sought should be barred and/or precluded by virtue of the doctrine of estoppel.

**FIFTH AFFIRMATIVE DEFENSE**

18. The causes of action and/or relief sought should be barred and/or precluded by virtue of the doctrine of accord and satisfaction.

**SIXTH AFFIRMATIVE DEFENSE**

19. The causes of action and/or relief sought should be barred and/or precluded by virtue of the doctrine of offset.

**SEVENTH AFFIRMATIVE DEFENSE**

20. The causes of action and/or relief sought should be barred and/or precluded by virtue of the doctrine of Third-Party Plaintiff's ratification, adoption, authorization and/or acquiescence in the actions and/or omissions complained of.

**EIGHTH AFFIRMATIVE DEFENSE**

21. The causes of action and/or relief sought should be barred and/or precluded by virtue that Third-Party Defendant's conduct was reasonable and made in good faith, and was not made in bad faith or in willful violation of any governing law.

**NINTH AFFIRMATIVE DEFENSE**

22. Plaintiff's claim against this Defendant must be dismissed for failure to comply with the applicable statute of limitations or repose.

**TENTH AFFIRMATIVE DEFENSE**

23. The causes of action and/or relief sought should be barred and/or precluded because Third-Party Plaintiff has not suffered any compensable losses.

**ELEVENTH AFFIRMATIVE DEFENSE**

24. Third-Party Plaintiff's claim must be dismissed because it suffered no damages as a result of any action or inaction by this Third-Party Defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

25. Third-Party Plaintiffs are not entitled to an award of counsel fees and costs.

**THIRTEENTH AFFIRMATIVE DEFENSE**

26. Third-Party Plaintiff's claims are barred, in whole or in part, because none of the alleged acts or omissions of this Third-Party Defendant were in any way the proximate cause of the injuries allegedly sustained by Third-Party Plaintiff. Rather, any alleged injuries sustained by Third-Party Plaintiff are as a direct result of other parties, namely Plainview, over which this Third-Party Defendant exercised no control.

**FOURTEENTH AFFIRMATIVE DEFENSE**

27. Third-Party Defendant neither knew nor should have known that any actions or inactions with respect to Third-Party Plaintiff were in violation of Third-Party Plaintiff's rights.

**FIFTEENTH AFFIRMATIVE DEFENSE**

28. While denying all of the allegations of Third-Party Complaint regarding liability and damages allegedly sustained by Third-Party Plaintiff, to the extent that Third-Party Plaintiff may be able to prove any such damages, they were proximately caused by intervening and/or superseding acts and/or faults of Third-Party Plaintiff and/or third persons, namely Plainview, over whom this Third-Party Defendant had no control and for whose actions this Third-Party Defendant is not liable.

**SIXTEENTH AFFIRMATIVE DEFENSE**

29. While denying all of the allegations of Third-Party Complaint regarding liability and damages allegedly sustained by Third-Party Plaintiff, to the extent that Third-Party Plaintiff may be able to prove any such damages, the claims are barred by virtue of Third-Party Plaintiff's conduct.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

30. Third-Party Defendant cannot be liable for any prejudgment or post-judgment interest on any claimed damages not yet incurred by Third-Party Plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

31. Defendant deserves the right to seek an award of counsel fees and costs pursuant to Rule 11 of the Federal Rules of Civil Procedure.

**NINETEENTH AFFIRMATIVE DEFENSE**

32. Plaintiff's claims are barred or limited for failure to mitigate damages.

**TWENTIETH AFFIRMATIVE DEFENSE**

33. The Third-Party Defendant breached no duty owed to the Third-Party Plaintiff.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

34. Any damages claimed by the Third-Party Plaintiff, said damages being specifically denied by this Third-Party Defendant, were caused by the culpable conduct of the Third-Party Plaintiff, including contributory negligence and assumption of the risk, and not by any culpable conduct or negligence on the part of this Third-Party Defendant.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

35. Any and all risks, hazards, defects, or dangers alleged were open, obvious, and apparent, natural and inherent and known, or should have been known to the Third-Party Plaintiff, and the Third-Party Plaintiff voluntarily assumed all such risks, hazards, defects, and dangers.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

36. The incident and injuries complained of were caused by the unauthorized, unintended and/or improper use of the products, equipment and/or materials referenced in the

Third-Party Complaint by the Third-Party Plaintiff, other parties, namely Plainview, and/or others over which this Third-Party Defendant exercised no control.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

37. Third-Party Defendant had no actual or constructive notice of the acts or occurrences alleged in the Third-Party Complaint.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

38. All damages complained of by Third-Party Plaintiff pre-existed the alleged occurrences, said occurrences being specifically denied.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

39. Third-Party Plaintiff is barred from recovery due to the lack of compliance with the terms of any and all express and/or implied warranties.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

40. The comparative fault of Third-Party Plaintiff bars this action and/or diminishes the liability of this Third-Party Defendant.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

41. Third-Party Plaintiff is barred from recovery against Third-Party Defendant because there is no direct connection between the alleged misconduct, if any, of this Third-Party Defendant and the alleged damages to Third-Party Plaintiff.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

42. Third-Party Plaintiff's claims are barred due to unavoidable circumstances.

**THIRTIETH AFFIRMATIVE DEFENSE**

43. Third-Party Plaintiff's claims under the New Jersey Product Liability Act are barred and subject to dismissal because the only damage sustained by Third-Party Plaintiff was

to the product itself.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

44. Third-Party Defendant reserves the right to supplement these affirmative defenses up to and including the time of trial.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

45. Third-Party Plaintiff's claims must be dismissed against Third-Party Defendant by reason of settlement and/or release.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

46. Third-Party Plaintiff's claims must be dismissed pursuant to FRCP 19.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

47. Third-Party Defendant will rely upon the rights and defenses accorded to it under the terms and provisions of the New Jersey Product Liability Act, N.J.S.A., 2A:58C-1 *et seq.*, which rights and defenses bar Third-Party Plaintiff's Complaint in whole or in part.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

48. Third-Party Defendant did not design or manufacture the NFDM that Third-Party Plaintiff contends was defective and Third-Party Defendant is not legally responsible for any defect in the product described in Third-Party Plaintiff's Complaint.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

49. Third-Party Defendant reserves the right to amend this answer to assert additional affirmative defenses as revealed by the completion of ongoing investigation and discovery.

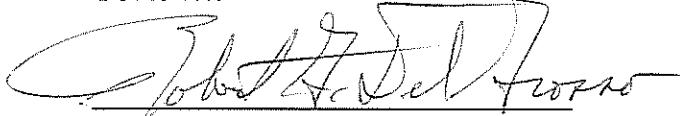
**JURY DEMAND**

50. Third-Party Defendant demands a trial by jury.

**WHEREFORE**, Third-Party Defendant demands judgment dismissing the Third-Party Complaint with prejudice, together with costs, disbursements and expenses of this action, and for such other and further relief as to this Court may seem just, proper and equitable.

Dated: Mineola, New York  
August 26, 2013

Yours etc.



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**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK      )  
                                ) ss.:  
COUNTY OF NASSAU      )

ROSANNE BRUSCINO, being duly sworn, deposes and says: I am not a party to the action, am over 18 years of age and reside in Suffolk County, New York. On August 29, 2013, I served a true copy of an ANSWER TO THIRD-PARTY COMPLIANT COUNTS IV AND V; AFFIRMATIVE DEFENSES; AND JURY DEMAND on:

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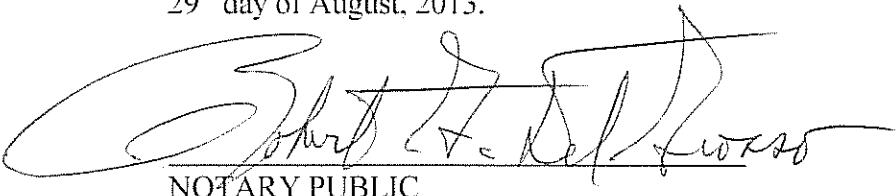
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via email.



ROSANNE BRUSCINO

Sworn to before me this  
29<sup>th</sup> day of August, 2013.



NOTARY PUBLIC

ROBERT G. DELGROSSO  
NOTARY PUBLIC, State of New York  
No. 5006142  
Qualified in Nassau County  
Commission Expires Dec. 28, 2014

**Civil Action No. 11-CV-03008 (FB) (CLP)**  
**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**

## **THE WORNICK COMPANY,**

**Plaintiff,**

### -against-

## **TRANS-PACKERS SERVICES CORPORATION,**

**Defendant.**

-x

**TRANS-PACKERS SERVICES CORP.,**

**Third-Party Plaintiff,**

- against -

**FRANKLIN FARMS EAST, INC.**

### **Third-Party Defendant.**

**ANSWER TO THIRD-PARTY COMPLAINT COUNTS IV AND V;  
AFFIRMATIVE DEFENSES; AND JURY DEMAND**

**ROBERT G. DEL GROSSO, ESQ.**  
Attorney for Third-Party Defendant  
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**Mineola, New York 11501**  
**(516)-294-3554**  
**Fax (516)-741-0912**

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous. *Sgt. A. D. T. P.*

Dated: August 29, 2012

Signature:

**Print Signer's Name:**

Service of a copy of the within is hereby admitted.

SERIALIZED

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**Attorney (s) for**

**PLEASE TAKE NOTICE**  
**{ } NOTICE OF ENTRY**

That the within is a (certified) true copy of a  
entered in the office of the clerk of the within named  
Court on

{ } NOTICE OF  
SETTLEMENT

That an Order of which the within is a true copy will be presented for settlement to the Hon.  
one of the judges of the within named Court, at:

New York, on at 9:30 a.m.

DATED:

TO: